PRIVY COUNCIL REPORT

TEOH CHAI SIOK v. DIRECTOR GENERAL OF INLAND REVENUE

[P.C. (Lord Edmund Davies, Lord Russell of Killowen, Lord Keith of Kinkel, Lord Bridge of Harwick & Sir John Megaw) February 10 & 11, 1981]

[Privy Council Appeal No. 27 of 1978]

Revenue Law — Income Tax — Purchase and sale of land — Whether adventure or concern in the nature of trade — Liability to tax — Income Tax Act, 1967, s. 4(a).

In this case the appellant had purchased land in Alor Star, Kedah, and after obtaining the permission of the Government to alter the conditions in the land title from agricultural purposes to one of erecting dwelling houses he sold the land at a profit. He was assessed to tax on the profit and his appeals to the Special Commissioners and to the High Court ([1977] 1 M.L.J. 34) were dismissed. A further appeal to the Federal Court was dismissed ([1977] 2 M.L.J. 212) and the appellant appealed.

Held, the Special Commissioners, the High Court and the Federal Court were right in holding that the transaction, although an isolated one, was an adventure or concern in the nature of trade.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

Raj Kumar Sharma for the appellants.

Stewart Bates Q.C. (*Steven Allcock* with him) for the respondents.

Cur. Adv. Vult.

Lord Edmund-Davies (delivering the oral judgment of the Board): This is an appeal from a judgment of the Federal Court of Malaysia. The matter started with an additional assessment of income tax for the year of assessment, 1974, made against the appellant. He appealed to the Special Commissioners against that assessment and the appeal was dismissed.

The appellant then proceeded by way of case stated to appeal to the High Court in Malaya and the question of law for the opinion of the court was whether, on the evidence before the Commissioners, they were entitled to hold that an isolated transaction, the nature of which need not now be gone into, was an adventure or concern in the nature of trade. Were that so, any profits or gains derived therefrom would admittedly be assessable to income tax. The learned judge in the High Court dismissed the appeal and in due course the appellant appealed to the Federal Court, who on June 25, 1977 again dismissed the appeal.

Having heard learned counsel for the appellant urge all that could properly be said on behalf of his client, their Lordships have not found it necessary to call upon learned counsel for the respondent. So convinced are their Lordships regarding the proper outcome, indeed the inevitable outcome, of this appeal that they propose neither to reserve judgment nor to say more than that they are in respectful agreement with the decision arrived at by the Federal Court and for the reasons which appear in their judgment.

Their Lordships will accordingly advise His Majesty the Yang di-Pertuan Agong that the appeal should be dismissed and that the appellant should pay the respondent's costs of the appeal.

Appeal dismissed.

Solicitors: *Gasters; Stephenson Harwood.*

SINGAPORE REPORTS

SYN MIN KONG SDN. BHD. & ORS. v. HUA SENG SAWMILL CO. BHD.

[C.A. (Kulasekaram, Chua & Rajah JJ.) October 7, 1980]

[Singapore — Civil Appeal No. 39 of 1980]

Practice and Procedure — Writ — Service out of jurisdiction — Failure to serve within 12 months — Extension of time — Discretion of court — R.S.C. 1970, O. 6 r. 7(2).

The appellants applied and obtained an order to issue a writ of summons, notice of which was to be served out of jurisdiction upon the respondents at Sibu, Sarawak. A request for service of the Notice of the Writ of Summons on the respondents was made by the appellants on July 17, 1979. On July 24, 1979 the Singapore High Court forwarded the necessary documents for service to the Permanent Secretary (Foreign Affairs, Singapore) in order that the service would be effected on the respondents through the judicial authorities in Malaysia. On November 30, 1979 the appellants applied by summons-in-chambers to the Registrar to renew the writ for a further period of twelve months. The summons came on for hearing before the Registrar on January 28, 1980. In the meantime the Notice of the Writ was served on the respondents on December 17, 1979, after the expiry of the writ. The respondents entered conditional appearance on January 4, 1980 and at the hearing before the Registrar the respondents opposed the application of the appellants. The Registrar made an order extending the validity of the writ for further period of twelve months from December 4, 1979. The respondents appealed and the learned Chief Justice allowed the appeal. On appeal by the appellants to the Court of Appeal.

Held, allowing the appeal: (1) the rules governing the extension of time are contained in R.S.C. 1970 Order 6 rule 7(2). In seeing whether the discretion should be exercised under that rule it must be remembered that at the time of the hearing of the application to renew the writ the cause of action to which the writ relates had become time-barred. The appellants in this case had one year to issue their writ. If they had issued it within that one year, they have another twelve months within which they could serve the writ. If they require to extend it for a further time before service, they ought to show sufficient reason for an extension of time;

(2) in this case it was not unreasonable for the appellants in all the circumstances to wait till July 17, 1979 to request for the service of the notice of the writ. The appellants could not have anticipated that the documents which had been despatched by the Singapore High Commissioner in Kuala Lumpur to the Malaysian Ministry of Foreign Affairs in Kuala Lumpur would take 3 months to reach the Registry of the High Court in Kuching and that it would take approximately a further five weeks for service to be effected on the respondents in Sibu. Service in this case could not have been effected by the appellants themselves. It had to be done through proper channels by the court in Kuching. They did all what they could and they could not be said to have been negligent at all.

Cases referred to:-

(1) *Battersby* v. *Anglo-American Oil Co. Ltd.* [1945] K.B. 23.

(2) *Heaven* v. *Road and Rail Wagons Ltd.* [1965] 2 All E.R. 409.

(3) *The "Nimrod"* [1973] 2 Ll. R. 91.

COURT OF APPEAL.

Denis Murphy for the appellants.

K. Jaya Prakash for the respondents.

Cur. Adv. Vult.

Chua J. (delivering the judgment of the Court): At the end of the hearing of the appeal we allowed the appeal and said that we would give our reasons in writing at a later date. We do so now.

The appellants applied and obtained an order on December 4, 1978, to issue a writ of summons, notice of which was to be served out of jurisdiction upon